

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the matter of)

Petition for Declaratory Ruling on)
Issues Contained In Count I of:)

IN THE UNITED STATES DISTRICT COURT)
FOR THE MIDDLE DISTRICT OF FLORIDA)
TAMPA DIVISION)
Case No. 97-1859-CIV-T-26C)

JAMES J. WHITE, PERRY KRANIAS,)
RALPH DELUISE and WALL STREET)
CONNECTIONS, INC.)

Representative Plaintiffs,)

vs.)

GTE CORPORATION; GTE WIRELESS)
INCORPORATED f/k/a GTE MOBILNET)
INCORPORATED; GTE WIRELESS OF)
THE SOUTH INCORPORATED f/k/a)
GTE MOBILNET OF THE SOUTH)
INCORPORATED; GTE MOBILNET OF)
TAMPA INCORPORATED; GTE WIRELESS)
OF HOUSTON INCORPORATED; GTE)
MOBILNET OF CLEVELAND INCORPORATED)
and GTE MOBILNET OF THE SOUTHWEST)
INCORPORATED,)

Defendants.)

CLASS ACTION COMPLAINT)

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PETITION FOR DECLARATORY RULING ON ISSUES CONTAINED
IN COUNT I OF "WHITE vs. GTE", UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA,
CASE NO. 97-1859-CIV-T-26C

COME NOW, the Petitioners, Plaintiffs in "WHITE vs. GTE", United States District Court for the Middle District of Florida, Case No. 97-1859-CIV-T-26C (hereinafter referred to as the "GTE Class Action", with the Defendants therein being hereinafter collectively referred to as "GTE"), by

and through undersigned counsel, and pursuant to the Order of Honorable Richard A. Lazzara, United States District Judge, hereby request the Commission to issue a declaratory ruling that GTE's practices of billing its customers for dead air time, billing its customers for unanswered calls, billing its customers for time when their mobile phone is not in use, and billing its customers for an arbitrary amount of time following the completion of a call by "rounding up" all time charges (as more particularly described below), constitute unjust and unreasonable billing practices in violation of 47 U.S.C. §201(b).

INTRODUCTION

Petitioners filed suit against GTE for its unjust, unreasonable, unfair and deceptive practices of billing and charging its cellular phone customers in whole minute increments, without fractions, where at all times such charges (i) are measured from the time the "send"(or other similarly named button) is pushed; (ii) include time for "unconnected calls" (where no one responds after a certain period of time or after a certain number of attempts within a short period of time); and (iii) are "rounded up" to the next minute (collectively "Round Up" or "Rounded Up" or "Rounding Up"). For example, when a call lasts 1 minute and 1 second (including all dead time and ringing time which follows pushing the "send" button), the airtime is rounded up to the next full minute and a GTE cellular customer is charged and billed for a 2 minute call. Likewise, when a call lasts 1 minute and forty five seconds, the customer is billed the same amount for a "2 minute" call. This practice of "rounding-up" is not adequately, fully, and conspicuously disclosed to any GTE cellular customer in contracts (customer service agreements), monthly billing statements, advertising and marketing materials, brochures, or any points of sale. Defendants' practice of non-disclosure of this rounding-up billing methodology results in millions of dollars of overcharges by Defendants to its customers.

In other words, cellular consumers do not get the "minutes" that they contracted for and are billed for under their service plans and are not billed on an accurate basis for their calls.

In Count I of the Complaint, Petitioners allege that GTE's practice of charging for all airtime on a "rounded up" basis is unjust and unreasonable and therefore unlawful, under the provisions of 47 U.S.C. 201(b), the Federal Communications Act. Further, Representative Plaintiffs alleged that pursuant to 47 U.S.C. 206, GTE is liable to Plaintiffs and class members for the full amount of damages sustained by the violation of 47 U.S.C. 201(b), together with reasonable attorney's fees, to be fixed by the court. GTE contended in its Motion to Dismiss that Count I should fail because per minute billing does not constitute a *per se* violation of the Federal Communications Act and that Petitioners have not suffered any direct injury from the billing process.

On October 21, 1999, the Honorable Richard A. Lazzara, United States District Judge, entered an Order referring Count I of the GTE Class Action to the Federal Communications Commission (the "FCC"), requiring the Petitioners to file with the FCC this Petition for Determination of Issues Contained in Count I of the GTE Class Action. The Court ordered the Clerk of the Court to certify a copy of the entire record in the GTE Class Action and to send same to the FCC. A copy of the Third Amended Complaint (hereinafter referred to as "Complaint") in the GTE Class Action is attached hereto as **Exhibit "A"**, and is incorporated herein by reference. A copy of the Court's Order of referral (hereinafter referred to as the "Order") is attached hereto as **Exhibit "B"**, and is incorporated herein by reference.

In the Order, the Court stated, " ... after carefully considering all the cases and pertinent provisions of the FCA, **this court concludes that the FCA permits under Section 207 a claim for damages for the reasonableness of a particular business practice, such as the practice of**

rounding up.” (Emphasis added). The Court further held that the FCA does not preempt the per minute billing practice claim brought under the Florida Deceptive and Unfair Trade Practices Act.

The Petitioners completely concur with the Judge Lazzara’s finding that Section 207 of the FCA permits a claim for damages for the reasonableness of a particular business practice, such as the practice of rounding up. **The Court was correct in determining that the case is not one of seeking a retroactive rate reduction.** The Petitioners are not and have not sought a rate change, but rather seek damages for the unreasonable and unjust billing practice of “rounding up”.

In light of the Court’s ruling, the Petitioners specifically request the FCC to declare that: billing its customers for dead air time, billing its customers for unanswered calls, billing its customers for time when their mobile phone is not in use and billing its customers for an arbitrary amount of time following the completion of a call are practices which are unjust or unreasonable under Section 201(b) of the Communications Act, 47 U.S.C. § 201(b).

ARGUMENT

I. ROUNDING-UP IS NOT A RATE ISSUE, BUT IS A BILLING PRACTICE WHICH IS UNREASONABLE UNDER THE COMMUNICATIONS ACT FOR IT VIOLATES, AND IS CONTRARY TO, THE TERMS OF GTE’S CONTRACTS WITH ITS CUSTOMERS

The Petitioners have not challenged the reasonableness of GTE’s rates, or the reasonableness, *per se*, of the rounding up to the next minute method of charging for actual airtime used by the consumer. Rather, the Petitioners allege the GTE has failed to abide by the terms of its contracts, which it drafted, and in failing to do so, violated Florida’s consumer protection statute, as well as the Communications Act, **because its past and continuing breach of the contracts is unjust.** As to Count I of the Complaint, all that has to be decided by the FCC is whether GTE’s admitted conduct of rounding up the time of each call to the next whole minute and charging for that whole

minute: (1) breached the unambiguous Contract, drafted by GTE, because such charges were not permitted by, and were in conflict with, the terms of said Contract; and (2) were “unjust” practices, in violation of § 201(b) of the Communications Act, because (i) such charges were not permitted by, and were in conflict with, the terms of the Contract, (ii) such charges result in the consumer paying for phantom services not received, and (iii) such charges result in unjust and arbitrary billing to the consumer (charging the same price for calls of different length is unreasonable) .

The Petitioners’ Class Action suit challenges GTE’s contract practices, not GTE’s rates. By way of example of how GTE’s contract practices violate the Communications Act, GTE, through its agents, offers a range of cellular service plans. Some of these plans offer a fixed charge per month for a specified period of airtime, e.g. 60 minutes. For any airtime used beyond the fixed-charge allotted under the service plan that the consumer contracted for, the consumer is charged at various rates “per minute” depending on the service plan chosen and whether each call is made during peak or off-peak hours. Neither GTE nor its agents disclose the true nature of the billing practices of treating all cellular calls as being at least one minute in length, of “rounding up” all calls to the next higher minute, and of treating all cellular calls as separate billing events despite the described “rate plans” which purport to impose one charge for a specified block of time. As a result of this billing practice alleged in the class action lawsuit, the Petitioners (and class members) were overcharged, did not receive the full amount of allocated airtime that they elected under a written contract, and were overcharged for airtime used in excess of the flat-rate amount allocated under the service plans chosen.

Several Federal courts (including the United States District Court for the Middle District of Florida in the GTE class action) have held that class action lawsuits of this nature do not challenge rates¹. In the GTE class action complaint, Petitioners allege, among other counts, breach of contract, violation of the Federal Telecommunications Act, and violation of the Florida Deceptive and Unfair Trade Practices Act. The questions of law and fact in the GTE class action lawsuit are:

(a) Whether Defendants engaged in deceptive and unfair business practices and false advertising;

(b) Whether the advertising, promotional, and sales materials, presentations and contractual documents, and other materials used by Defendants to market, distribute, and sell Defendants's cellular services misrepresented or omitted material facts;

(c) Whether Defendants acted willfully, recklessly, or with gross negligence in omitting to state and/or misrepresenting material facts regarding its billing practice of rounding-up;

(d) Whether Defendants violated the Florida Deceptive and Unfair Trade Practices Act;

(e) Whether Defendants violated 47 U.S.C. Sect. 201(b) by deceptively promoting, contracting, and billing Petitioners and class members for cellular service by rounding up calls to the next higher minute; and

(f) The nature and extent of damages and other remedies to which the conduct of Defendants entitles the Petitioners and class members.

¹ In Judge Lazzara's Order attached as Exhibit "B", the Court stated, "Plaintiffs do not appear to be challenging the reasonableness of the rates. . .but are challenging the reasonableness of the billing practice itself."

II. STATE LAW CAUSES OF ACTION FOR ROUNDING-UP BILLING PRACTICES ARE NOT PREEMPTED BY § 332(c)(3) OF THE COMMUNICATIONS ACT

GTE has argued that the non-disclosure of its deceptive promotional, sales, contracting and billing practice of rounding-up is lawful, just and reasonable, and that there is complete federal preemption of any state law causes of action challenging such deceptive practices. That theory is dead wrong: numerous courts have held that federal law does not preempt claims like Petitioners. In order to be completely preemptive of state law, a federal statute must do more than simply preempt state law which is inconsistent with the federal statutory scheme; the federal statute must occupy the entire field of regulation. *Wisconsin Public Intervenor v. Mortier*, 111 S.Ct. 2476, 2481, 115 L.Ed.2d 532, 542-43 (1991) [attached hereto, see Index of Cases] . Far from occupying the field of regulation at issue in the present case, the federal statute upon which Defendants rely *expressly preserves* the kind of state law claims which Petitioners have brought.

The Communications Act, passed in 1934, was enacted to “make available, as far as possible, to all the people of the United States a rapid, efficient, nationwide and worldwide wire and radio service with adequate facilities at reasonable charges . . .” 47 U.S.C. §151. To that end, Congress placed common carriers providing interstate telephone service under the jurisdiction of the Federal Communications Commission (the “FCC”) and enacted a comprehensive regulatory scheme governing common carriers. For example, carriers are required to furnish telephone service upon reasonable request. §201(a). They are also required to file tariffs regarding their rates, to charge reasonable rates, and to avoid unreasonable or discriminatory practices. *Id.* § 201-203. Congress also provided a *general* jurisdictional grant for federal courts to adjudicate controversies arising under the Communications Act:

Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the commission as hereinafter provided for, or may bring suit for the recovery of the damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction; but such person shall not have the right to pursue both such remedies.

Id. § 207.

However, the Communications Act also has a “savings clause”, which provides that “*nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.*” 47 U.S.C. § 414. (emphasis added). The savings clause thus preserves state law “causes of action for breaches of duties distinguishable from those created under the Act, as in the case of a contract claim” *Comtronics, Inc. v. Puerto Rico Telephone Company*, 553 F.2d 701, 708 n.6 (1st Cir. 1977); *accord Am. Inmate Phone System, supra*, 787 F.Supp. 852 at 856 (N.D.Ill. 1992) (explaining that the Communications Act does not preempt a state law contract claim where “the duties created by the verbal contract are distinct from the duties created by the Communications Act”) [attached hereto, see Index of Cases].

Courts have consistently held that the Communications Act does *not* preempt state court claims for breaches of independent duties that neither conflict with specific provisions of the Act nor interfere with the Act’s regulatory scheme. See *Weinberg v. Sprint Corp.*, No. 96-354 (AMW), 1996 WL 172560 (D.N.J. April 10, 1996) (where court remanded consumer case complaining of non-disclosure of “rounding -up” billing practices because it was not an attack on billing rates); *In re Long Distance Telecommunications Litigation*, 831 F.2d 627, 633 (6th Cir. 1987) (holding that the

Communications Act preserved state law claims for fraud and deceit against a telecommunications carrier) [attached hereto, see Index of Cases]; *Bruss Company v. Allnet Communication Services, Inc.*, 606 F.Supp. 401, 410-11 (N.D.Ill. 1985) (holding that the Communications Act preserved state common law and statutory fraud claims) [attached hereto, see Index of Cases]; *Kellerman v. MCI Telecommunications Corp.*, 112 Ill.2d 428, 493 N.E.2d 1045, 1051, 98 Ill.Dec. 24 (Ill. 1986) (holding that the Communications Act preserved state law claims arising out of defendant's allegedly false advertising practices) [attached hereto, see Index of Cases]; *Am. Inmate Phone Systems, supra*, 787 F.Supp. at 856-59 (N.D.Ill. 1992) (holding that the Communications Act preserved state law contract and consumer fraud claims) [attached hereto, see Index of Cases]; *Cooperative Communications v. AT&T Corp.*, 867 F.Supp. 1511, 1515-17 (D.Utah 1994) (holding that the Communications Act preserved state law claims for intentional interference with prospective economic relations, interference with contract, business disparagement, breach of covenant of good faith and fair dealing and unfair competition) [attached hereto, see Index of Cases].

As the foregoing cases demonstrate, the plain purpose of both the Act in general and the savings clause in particular is to preserve the right to bring state law claims, provided that maintenance of such suits does not interfere with the Communications Act's requirement for the provision of uniformly reasonable, non-discriminatory telecommunications service to all Americans. *Comtronics, supra*, 553 F.2d at 708 n.6 (1st Cir. 1977) [attached hereto, see Index of Cases]. State law claims based upon the breach of duties *not* imposed by the Communications Act, *e.g.*, breach of contract or fraud claims, obviously do not detract from the uniformity of the duties which the Act does impose.

Petitioners in this action are not alleging the breach of any duty imposed by the Communications Act, including the Act's requirement that interstate telephone carriers charge reasonable rates. **Petitioners are not challenging the reasonableness of the rates charged by Defendants. Petitioners are merely challenging only Defendants deceptive practice of non-disclosure that it would charge more than actual usage time, and that Defendants would "round-up" all cellular calls to the next higher minute for billing purposes.** As broad as it is, the Communications Act does not purport to regulate specific sales strategies and marketing devices employed by telecommunication carriers. On the contrary, as one district court recently concluded,

the Communications Act is primarily concerned with the quality, price, and availability of the underlying service. Because allowing Cellular Dynamics to recover damages for any injuries it suffered as a result of MCI's allegedly fraudulent marketing strategies neither conflicts nor interferes with any provision, regulation, or policy underlying the Act, the court finds that plaintiffs' consumer fraud claim is not preempted.

Cellular Dynamics, Inc. v. MCI Telecommunications Corporation, Case No. 94C3126, Northern District of Illinois, 1995 U.S. District Lexis 4798 [attached hereto, see Index of Cases].

In essence, Defendants' complete preemption argument amounts to an arrogant assertion that the Communications Act gives common carriers like Defendants a federal license to defraud its consumer customers with no fear of exposure under state law. In that vein, Defendants note that §332(c)(3)(a) of the Communications Act states that "no state or local government shall have any authority to regulate the entry or rates charged by any commercial mobile service or any private mobile service." [Defendants' Memorandum In Support of Motion To Dismiss, page 10, citing 47 U.S.C. §332(c)(3)(a)]. Defendants conveniently misled the Court because that very provision also

explicitly reserves to the states the authority to regulate the "other terms and conditions of commercial mobile services." The House of Representatives Committee on Energy and Commerce, reporting on the House Bill that was incorporated in the amended §332, emphasizes that even in those areas where state rate regulation is preempted, states nonetheless may regulate other terms and conditions of commercial mobile radio services. The Committee stated:

By 'terms and conditions', the Committee intends to include such matters as customer billing information and practices and billing disputes and other consumer protection matters . . .

H.R. Report No. 103-111, 103rd Congress, 1st Session at 261 (emphasis added).

Clearly, there is no inconsistency whatsoever between the Communications Act and Petitioners' state law claims directed to the deceptive practices set forth in Petitioners Complaint. Even if there were some such inconsistency, the Federal Communications Act, which expressly preserves the right to pursue state remedies consistent with the Act, obviously does not completely displace state law, as Defendants inexplicably allege in the Memorandum In Support of Motion To Dismiss.

III. OTHER COMMERCIAL MOBILE RADIO SERVICE PROVIDERS HAVE SETTLED SIMILAR ROUNDING-UP CONSUMER FRAUD AND BREACH OF CONTRACT CLASS ACTION LAWSUITS

While GTE seeks to usurp state and federal court jurisdiction over consumer fraud and breach of contract lawsuits challenging GTE's misrepresentation and non-disclosure to consumers of its practice of rounding-up to the next higher minute, other commercial mobile radio service providers have in fact been subjected to the same identical challenges in state and federal courts, and thereafter, entered into global settlement agreements, settling the challenged and disputed practices. *Anthony*

Penrod v. Southwestern Bell Mobile Systems, Inc., Circuit Court of Madison County, Illinois, Cause No. 96-L-132; Darryl v. Cohen, et al. v. Airtouch Communications, Inc., et al., Superior Court of the State of California, County of San Francisco, Case No. 972438; Michael Lair and Dave Manweiler v. U.S. West New Vector Group, Superior Court of the State of Washington For King County, Case No. 95-2-26309-7. The settlements of the *Penrod*, *Cohen*, and *Lair* actions are clearly evident that Petitioners's state law claims are not preempted, and that the state law claims best serve to protect the interests of Petitioners and consumers.

WHEREFORE, the Petitioners respectfully request the Federal Communications Commission (FCC) to take jurisdiction over the issues contained in Count I of the Third Amended Complaint, to review the entire record of the GTE Class Action, to make the specific finding that Section 207 of the FCA permits a claim for damages in Federal court for the reasonableness of the practice of "rounding up", and to make any other findings or rulings that is deemed appropriate under the circumstances.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Declaratory Ruling on Issues Contained in Count I of *White v. GTE*, has been served to: **James M. Landis, Esquire**, FOLEY & LARDNER, 100 North Tampa Street, Suite 2700, Tampa, FL 33601; and **Peter Kontio, Esquire**, ALSTON & BIRD LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, GA 30309-3424, by U.S. Mail, this 28th day of January, 1999.



James A. Staack, Esquire

A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMES J. WHITE, PERRY KRANIAS,
RALPH DELUISE and WALL STREET
CONNECTIONS, INC.

Case No. 97-1859-CIV-T-26C

Representative Plaintiffs,

vs.

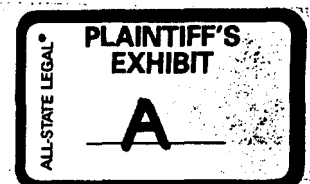
**CLASS ACTION COMPLAINT;
DEMAND FOR JURY TRIAL**

GTE CORPORATION; GTE WIRELESS
INCORPORATED f/k/a GTE MOBILNET
INCORPORATED; GTE WIRELESS OF
THE SOUTH INCORPORATED f/k/a
GTE MOBILNET OF THE SOUTH
INCORPORATED; GTE MOBILNET OF
TAMPA INCORPORATED; GTE WIRELESS
OF HOUSTON INCORPORATED; GTE
MOBILNET OF CLEVELAND INCORPORATED;
and GTE MOBILNET OF THE SOUTHWEST
INCORPORATED,

Defendants.

THIRD AMENDED COMPLAINT

The named Representative Plaintiffs, JAMES J. WHITE, PERRY KRANIAS, RALPH DELUISE and WALL STREET CONNECTIONS, INC. (hereinafter referred to as "Plaintiffs"), on their own behalf and behalf of all others similarly situated, sue the Defendants, GTE CORPORATION; GTE WIRELESS INCORPORATED f/k/a GTE MOBILNET INCORPORATED; GTE WIRELESS OF THE SOUTH INCORPORATED f/k/a GTE MOBILNET OF THE SOUTH INCORPORATED; GTE MOBILNET OF TAMPA INCORPORATED; GTE WIRELESS OF



HOUSTON INCORPORATED; GTE MOBILNET OF CLEVELAND INCORPORATED; and GTE MOBILNET OF THE SOUTHWEST INCORPORATED, (hereinafter collectively referred to as "GTE"), and allege:

PARTIES

1. This action is brought by Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under the provisions of Rule 23, Federal Rules of Civil Procedure.

2. Representative Plaintiffs, **JAMES J. WHITE, PERRY KRANIAS, and RALPH DELUISE** are citizens of the United States, and are residents of the State of Florida. Members of the class are residents throughout much of the United States.

3. Representative Party Plaintiff, **WALL STREET CONNECTIONS, INC.**, is a dissolved Florida Corporation having Ralph DeLuise as its surviving President and having conducted its business from a primary office located in Pinellas County, Florida.

4. At all times material hereto, **GTE CORPORATION** is a New York corporation engaged in, among other things, providing, among other services, cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates. GTE CORPORATION is the parent corporation of or is otherwise affiliated with all other Defendants named herein.

5. At all times material hereto, **GTE WIRELESS INCORPORATED f/k/a GTE MOBILNET INCORPORATED**, is a Delaware corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates.

6. At all times material hereto, **GTE WIRELESS OF THE SOUTH**

INCORPORATED f/k/a GTE MOBILNET OF THE SOUTH INCORPORATED, is a Delaware corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates, and is duly authorized to conduct business in the State of Florida.

7. At all times material hereto, **GTE MOBILNET OF TAMPA INCORPORATED**, is a Florida corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates, and is duly authorized to conduct business in the State of Florida.

8. At all times material hereto, **GTE WIRELESS OF HOUSTON, INC.**, is a Delaware corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates.

9. At all times material hereto, **GTE MOBILNET OF CLEVELAND, INC.**, is a Delaware corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates.

10. At all times material hereto, **GTE MOBILNET OF THE SOUTHWEST, INC.**, is a Texas corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates.

11. All Defendants named herein are subsidiaries or affiliates of **GTE MOBILNET SERVICES CORPORATION**.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. 1331 (Federal Question) and 47 U.S.C. 201(B) (The Communications Act). This civil action arises under the laws

of the United States, and this court has jurisdiction over Florida state claims under the principles of pendent jurisdiction.

13. At all times material hereto, Defendant(s) have transacted and done business within the Middle District of Florida either directly or indirectly through their subsidiaries and affiliates. The causes of action alleged herein arose in substantial part within the Middle District of Florida. Venue is therefor proper under 28 U.S.C. 1391(b) and (c).

GENERAL ALLEGATIONS

14. At all times material hereto, GTE has charged its cellular phone customers in whole minute increments, without fractions, and at all times such charges (i) are measured from the time the "send"(or other similarly named button) is pushed (ii) include time for "unconnected calls" (where no one responds after a certain period of time or after a certain number of attempts within a short period of time) and (iii) are "rounded up" to the next minute (collectively "Round Up" or "Rounded Up" or "Rounding Up"). For example, when a call that lasts 1 minute and 1 second (including all dead time and ringing time which follows pushing the "send" button), the airtime is rounded up to the next full minute and Plaintiffs and all GTE cellular customers similarly situated are charged and billed for a 2 minute call.

15. At all times material hereto, Plaintiffs and class members were customers of GTE, obtained cellular telephonic services through GTE, were billed monthly on a Rounded Up basis for said services and paid for said Rounded Up services, a copy of certain representative billings being attached as Composite Exhibit "A" to this complaint, and by this reference incorporated herein as "Sample Billings".

16. At all times material hereto, GTE records the duration of all calls ("airtime") made and received by its cellular phone customers and, on information and belief, GTE's equipment and computers are fully capable of and, in fact, do record airtime either to the second or a fraction thereof.

17. At no time did GTE adequately inform or disclose to Plaintiffs that they would be charged for all airtime on a Rounded Up basis nor did GTE adequately disclose the nature of its Rounding Up practices.

18. Plaintiffs and class members were reasonably induced into contracts, both oral and written, for cellular services by GTE with advertisements and materials, including, among other things, promises of free airtime. Such advertisements and materials do not disclose GTE's practices of Rounding Up.

19. The regular monthly bills provided to Plaintiffs and GTE's cellular phone customers do not disclose or explain to the consumer GTE's practice of Rounding Up. Please see the Sample Billings attached as Composite Exhibit "A".

20. Plaintiffs and similarly situated GTE cellular phone service customers entered into certain contracts for said cellular service. Nowhere in said contracts is there an adequate a description or disclosure, if any, provided as to GTE's Rounding Up practices. A copy of a Representative Plaintiff's contract is attached hereto as Exhibit "B" and made a part hereof.

21. The parties to the contracts are (i) GTE (GTE MOBILNET SERVICES CORP. and any and all other subsidiaries and affiliates of GTE MOBILNET SERVICES CORPORATION) and (ii) Plaintiffs and class members.

22. The contracts, both oral and written, were used by Defendants with both business customers and with personal use customers.

23. Over time, based upon the deceptive nature of GTE's Rounding Up practices, Plaintiffs and GTE cellular customers similarly situated have paid for Rounded Up airtime well in excess of actual airtime used.

CLASS REPRESENTATION ALLEGATIONS

24. This action is brought by Plaintiffs as a class action on their own behalf and on behalf of all others similarly situated under the provisions of F.R.C.P 23.

25. Members of the class are all persons and entities located throughout the State of Florida, who are or have been cellular service customers of Defendant GTE, who have been charged and paid for Rounded Up airtime.

26. Because of GTE's concealment of and failure to disclose or failure to adequately disclose its practices of charging on a Rounded Up basis, members of the class have paid over time sums which greatly exceed actual airtime used.

27. The exact number of members of the class as identified and described above is not known, but it is estimated, by virtue of information circulated by GTE to the general public, that GTE provides cellular telephone services to more than Three Million (3,000,000) customers nationwide and that a large portion of those customers are situate in Florida. The members of the class are so numerous that joinder of the individual class members herein is impracticable.

28. There are common questions of law and fact in the actions that relate to and affect the rights of each member of the class that predominate over any individual issues, and the relief sought is common to the members within the entire class.

29. The claims advanced by the Plaintiffs are typical of the claims of each member of the proposed class in that the Plaintiffs are now or have in the past been GTE cellular telephone service customers.

30. The Plaintiffs will fairly and adequately protect and represent the interest of each member of the proposed class, seek recovery on their own behalf and on behalf of all the similarly situated members of the class, and the Plaintiffs agree to act as class representatives. Additionally, Plaintiffs are committed to protect vigorously the rights of the class and will do so fairly and adequately.

31. Prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for GTE, or adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

32. GTE has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole, or the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

33. If the present action is not certified as a class action, there is a risk that GTE will continue unfairly, unlawfully and improperly to charge for all airtime on a Rounded Up basis. Further, adjudication concerning any individual of the class as defined herein would, as a practical

matter, be determinative of the interest of the class members who are not parties to the adjudication, or would substantially impair or impede the ability of other members of the class who are not parties to this suit to protect their interests.

34. It is desirable to concentrate the litigation of all claims of the Plaintiffs and the members of the class in this forum.

35. Potential class management difficulties are insignificant when weighed against the impossibility of affording adequate relief to the Plaintiffs and members of the class through separate actions.

WHEREFORE, the Plaintiffs move this Honorable Court to certify the above identified class and determine said Plaintiffs to be adequate representatives of the class in this cause.

COUNT I
VIOLATION OF 47 U.S.C. 201(b)

36. The Plaintiffs and class members reallege and incorporate herein paragraphs 1 through 23 above, as if recited in full.

37. This is an action for damages for violation of 47 U.S.C. 201(b), and brought pursuant to 47 U.S.C. 207.

38. The practice of charging for for all airtime on a Rounded Up basis is unjust and unreasonable, and therefore unlawful, under the provisions of 47 U.S.C. 201(b).

39. Pursuant to 47 U.S.C. 206, GTE is liable to Plaintiffs and class members for the full amount of damages sustained by the violation of 47 U.S.C. 201(b), together with reasonable attorney's fees, to be fixed by the court, which shall be taxed and collected as part of the costs in this case.

WHEREFORE, Plaintiffs and class members request that the conduct of GTE as set forth in

Count I above be adjudged unlawful under 47 U.S.C. 201(b), for attorney's fees and costs of this action and for such other and further relief as the Court may deem just and appropriate under the circumstances.

COUNT II
INJUNCTION

40. The Plaintiffs and class members reallege and incorporate herein paragraphs 1 through 23 above, as if recited in full.

41. This is an action for injunctive relief.

42. GTE has collected and continues to collect money pursuant to their deceptive Rounding Up practices and such practices are against public policy and otherwise unfair and inequitable, especially in view of the potential for excessive billing on an ongoing monthly basis.

43. Each month, Plaintiffs and class members continue to be charged on a Rounded Up basis and, hence, Plaintiffs and class members have paid or are paying for airtime not used. The Plaintiffs and class members are in immediate and imminent danger of irreparable injury by being so billed with the next monthly billing cycle and beyond.

44. The Plaintiffs and class members have no adequate remedy at law.

WHEREFORE, Plaintiffs and class members request that the conduct of GTE as set forth in Count II above be adjudged as placing Plaintiffs and class members in immediate and imminent danger of irreparable injury, that the Court enter an order permanently enjoining and restraining GTE from Rounding Up, for costs of this action and for such other and further relief as the Court may deem just and appropriate.

COUNT III
BREACH OF CONTRACT

45. The Plaintiffs and class members reallege and incorporate herein paragraphs 1 through 23 above, as if recited in full.

46. This is an action for breach of contract.

47. The agreement to provide cellular telephone services including airtime is a contract, or at the very least, a quasi-contract, indeed, Defendants often utilize written agreements such as those attached as Exhibits hereto with Plaintiffs and class members in connection with initiating cellular phone service.

48. Defendants do not disclose or, alternatively, do not adequately disclose their Rounding Up practices in their oral and written contracts with Plaintiffs and class members and because of this practice, Defendants have breached each and every contract with Plaintiffs and class members by charging and collecting more money for cellular phone services than Plaintiffs and class members have agreed to pay.

49. Plaintiffs and class members have performed under their contracts and quasi contracts with Defendants by paying for cellular phone service.

50. As a direct and proximate result of Defendants' breach of said contracts, Plaintiffs and class members have been damaged.

WHEREFORE, Plaintiffs and class members pray that the conduct of GTE as set forth in Count III be adjudged as constituting a breach of the cellular service contracts and quasi contracts and demand a judgment in damages against Defendants , including prejudgment interest, for costs of this action and for such other and further relief as the Court may deem just under the circumstances.

COUNT IV
VIOLATION OF FLORIDA'S UNFAIR AND
DECEPTIVE TRADE PRACTICES ACT

51. The Plaintiffs and class members reallege and incorporate herein paragraphs 1 through 23 above, as if recited in full.

52. This is an action for damages which exceed \$50,000.00 pursuant to Fla. Stat. §501.201, et. seq., Florida Unfair Deceptive Trade Practices Act.

53. Plaintiffs and class members are “consumers” as defined in Fla. Stat. §501.203(7).

54. The providing of cellular telephone services by GTE constitutes a “trade or commerce” under Fla. Stat. §501.203(8).

55. The actions of GTE in charging for all airtime on a Rounded Up basis, without adequately disclosing such practices, constitutes an unfair method of competition, unconscionable acts or practices, and/or unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of Fla. Stat. §501.201, et. seq., Florida Unfair Deceptive Trade Practices Act.

56. GTE knew or should have known that its conduct was unfair and deceptive or otherwise prohibited by §501.201, et. seq., Florida Unfair Deceptive Trade Practices Act.

57. As a direct and proximate result of the unfair and deceptive trade practices of GTE, Plaintiffs and class members have been damaged in an amount equal to actual damages, attorneys’ fees and costs, plus prejudgment interest.

WHEREFORE, Plaintiffs and class members pray that the conduct of GTE in Count V be adjudged as violative of Florida’s Unfair and Deceptive Trade Practices Act, that Plaintiffs and